

Editor's note: Reconsideration denied by order dated Feb. 25, 1981

ERVIN WHEELER
TONI SHUGART
KATHY COFFEE

IBLA 79-423
79-473

Decided October 31, 1980

Appeals from decisions of the Colorado State Office, Bureau of Land Management, rejecting oil and gas lease offers C-27909, C-27911, and C-27912.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Known Geologic Structure -- Oil and Gas Leases: Noncompetitive Leases

Lands within a known geologic structure of a producing oil or gas field may be leased only by competitive bidding pursuant to 43 CFR 3120, and a noncompetitive oil and gas lease offer filed for such lands is properly rejected where either before or after the filing of the offer, but prior to the issuance of the lease, the land is determined to be within the known geologic structure of a producing oil or gas field.

2. Oil and Gas Leases: Known Geologic Structure

An applicant for an oil and gas lease who challenges a determination by the Geological Survey that lands are situated within the known geologic structure of a producing oil or gas field has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error.

APPEARANCES: Earl H. Johnson, Esq., Denver, Colorado, for appellants.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Ervin Wheeler, Toni Shugart, and Kathy Coffee ^{1/} appeal (amended April 21, 1980) from decisions of the Colorado State Office, Bureau of Land Management (BLM), dated April 25, 1979, rejecting their noncompetitive oil and gas lease offers C-27909, C-27911, and C-27912 which received first priority respectively for parcel Nos. CO-204, CO-206, and CO-207 in the February 1979 drawing of simultaneously filed oil and gas lease offers. The decisions issued affecting appellants Coffee and Shugart vacated State Office decisions of April 5 and 6, 1979, requiring them to join the Moqui and Cow Canyon Unit Agreements respectively. In addition, the decision issued to Coffee vacated the April 5, 1978, decision requiring her to tender the first year's rental. BLM's decisions were based on a finding that the land embraced in the lease offers was determined by Geological Survey (Survey) in its memorandum of April 9, 1979, to be within an undefined addition to an undefined known geologic structure (KGS) of a producing oil or gas field effective December 12, 1978. Once land is placed within a KGS prior to actual issuance of a lease, the land may be leased only by competitive bidding as set forth in 43 CFR 3101.1-1 and 3120 and therefore, appellants' offers were rejected.

In their statement of reasons, appellants note that the term "Known Geologic Structure of a Producing Oil and Gas Field" is defined as "a trap, whether structural or stratigraphic in which an accumulation of oil and gas has taken place, and in which there has been production. It includes acreage that is presumptively productive." Attached to the statement of reasons is a report prepared by, geologist Robert T. Young, in which he concluded that the structure in which the subject acreage lies is not "presumptively productive." He stated that there is no downdip control for the Mississippian objectives and that to find a presumption of production under such circumstances would be only a guess based upon no evidence.

Appellants contend that BLM's statement that the acreage "is within an undefined addition to an undefined Known Geologic Structure," is so vague and all-encompassing as to be meaningless.

Appellants note that Survey proclaimed the acreage to be within a KGS effective December 12, 1978. They were required to pay their \$ 10 filing fees before the drawing in February 1979 and contend that it is unjust that they must forfeit the \$ 10, because BLM was not aware of Survey's proclamation.

^{1/} Because of the similarity of issues involved in these cases, the appeals are consolidated for the purpose of this decision.

Survey's memorandum of April 9, 1979, states that the land in issue was within an undefined addition to an undefined KGS effective December 12, 1978.

On January 8, 1980, the Board requested Survey to comment on the report by geologist Robert T. Young submitted by appellants in support of their position. The response of Geological Survey to that request is set forth below:

1. Structure contour map prepared by R. T. Young, annotated by U.S.G.S. showing (a) wells used to establish the west boundary of the KGS, (b) entire KGS boundary, and (c) a copy of the First Production Notice for the Risley Canyon Unit #1, the well upon which the KGS determination was based.

The Risley Canyon Unit #1 was completed December 12, 1978, and had calculated daily rate of 15,190 MCF of CO₂ gas. The Mississippian Leadville Formation is approximately 300 feet thick in the subject well, as it is throughout the area, and dips to the west in the vicinity of the subject lease offers at a rate which ranges from about 40 to 100 feet per mile. In addition, the formation contains a dynamic water system which dips to the west at a rate of about 50 feet per mile. The combination of the dipping formation and the tilted gas/water contact makes it difficult to establish the exact limits of the gas accumulation. However, it was determined that a reasonable location for the Western limit of the CO₂ gas accumulation would be near the -2000 foot Leadville structure contour.

Of the three lease offers under question, one is totally above the lowest control point (Risley Canyon Unit #1) in which the top of the Leadville is at -1710 feet below sea level. The other two parcels are immediately to the west of the -1700 structure contour and are presumed to be productive for CO₂ gas based upon the projected limits of the CO₂ gas field.

The second objection, concerning the possibilities of nonporous rock is not applicable. All wells within the KGS drilled through the Leadville Limestone are either productive or producible. The nonporous tests are not near the area in question.

In view of the above, the suggestion that the Mississippian Leadville Formation is nonproductive, in the area of the subject lease offers, is inconsistent with

available geological data. The Risley Canyon Unit #1 and the projection of the tilted gas/water contact indicates the lands of the subject lease offers to be CO[2] productive and are therefore within the boundaries of a KGS.

[1] The issuance of oil and gas leases on the public domain is governed by statute. If the lands to be leased are within any KGS "they shall be leased to the highest responsible qualified bidder by competitive bidding." 30 U.S.C. § 226(b) (1976). The fact that the land was erroneously posted as available does not change this. A noncompetitive offer to lease certain lands for oil and gas must be rejected where either before or after the filing of the offer and prior to the issuance of the lease the land is determined to be within the known geologic structure of a producing oil or gas field. United States v. William T. Alexander, 41 IBLA 1 (1979); Curtis Wheeler, 31 IBLA 221 (1977); Guy W. Franson, 30 IBLA 123 (1977); James A. Wallender, 26 IBLA 317 (1976); Geral Beveridge, 14 IBLA 351, 81 I.D. 80 (1974); James W. McDade, 3 IBLA 226 (1971), aff'd, McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd per curiam, 494 F.2d 1156 (D.C. Cir. (1974).

[2] The Secretary of the Interior has delegated the duty to determine the KGS of producing oil and gas fields to the Director of the Geological Survey, D.M. 220.4.1G; 43 CFR 3100.7-1, and when Survey makes this determination, the Secretary is entitled to rely upon the reasoned opinion of his technical expert in the field. Curtis Wheeler, supra at 222; James A. Wallender, supra at 318; see also Clear Creek Inn Corporation, 7 IBLA 200, 213-214, 79 I.D. 571, 578 (1972).

An applicant for an oil and gas lease who challenges a determination by Survey that lands are situated within a KGS has the burden of showing that the determination is in error and the determination will not be disturbed in the absence of a clear and definite showing of error. United States v. William T. Alexander, supra; Jack J. Bender, 40 IBLA 26 (1979); Curtis Wheeler, supra; Guy W. Franson, supra at 125; James A. Wallender, supra. Appellant has failed to offer evidence which would persuade us that the KGS determination made by Survey is not sufficiently specific and correct.

Appellants claim that it would be unjust for BLM to retain their filing fees under the circumstances. Since the land in issue should not have been posted as available for leasing, we find that appellant's filing fees should be returned. See James H. Scott, 25 IBLA 384 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State Office decisions vacating its decisions requiring appellants to tender the first year's rental and join the unit agreement and rejecting the lease offers are affirmed, with the State Office to return appellants' filing fees.

Anne Poindexter Lewis
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Joseph W. Goss
Administrative Judge

